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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re A.W. et al., Persons Coming Under
the Juvenile Court Law.

SAN FRANCISCO HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

AUTUMN T.,

Defendant and Appellant.

A155473

(San Francisco City and County
Super. Ct. Nos. JD17-3252,
JD17-3253, JD17-3253A)

For the second time in two and one-half years, Autumn T.’s (Mother’s) three children were removed from her care due to her alcohol abuse, mental health problems, and conflict with one of their fathers. Mother vowed not to participate in services, harassed and made unsubstantiated charges against the children’s fathers, and harassed the children’s schools. All three children thrived in their respective fathers’ care. Ten months after the children were removed from Mother’s care, the court granted sole legal and physical custody to their fathers, ordered supervised visitation for Mother, dismissed the dependency case, and terminated jurisdiction. We affirm.

BACKGROUND

A.

In 2002, Mother had two sons in juvenile dependency proceedings in Illinois. Because the case “wasn’t going anywhere,” she and one child’s father took both boys out

of the country. One child was returned to his father in Illinois, and the other apparently remained in Italy with his father.

Mother had another son (A.W.) in 2008, and twins in June 2014. In August 2014, the San Francisco Human Services Agency (Agency) substantiated a report of severe neglect of the twins. Mother stated that to punish the twins' father, R.S., she deliberately drank to excess during pregnancy to "have Fetal Alcohol Syndrome babies" and "hope[d] they [would] die." She continued to drink while breastfeeding, and the twins were undernourished. Later that month, while R.S. was dropping off the twins, Mother gouged her fingernails into his arm while intoxicated and was arrested for domestic violence. The Agency filed Welfare and Institutions Code section 300 juvenile dependency petitions for all three children based on allegations that Mother's mental health problems and alcohol abuse posed a risk of harm. The children were removed from her care and placed with their respective fathers. In May 2015, the case was dismissed with dependency jurisdiction terminated, full legal and physical custody granted to the fathers, and supervised visitation for Mother. In November 2016, Mother obtained joint custody through family court proceedings, apparently by showing she was taking medication to stop her alcohol abuse.

B.

In September 2017, Mother refused to let R.S. pick up the twins from her home, yelled profanities at him in the children's presence, and broke his sunglasses in half. He generally remained calm, but at one point he grabbed Mother's cellphone and threw it on the floor. R.S. was arrested for domestic violence. Mother lied to the Agency about the incident, but it had been videorecorded. Nine-year-old A.W. reported that Mother regularly drank wine and sometimes vomited and passed out, leaving him to care for the twins. Mother told a social worker she was not drinking, even though she smelled of alcohol during an interview. A.W. would not talk to his father, B.W., about his experiences in Mother's care and sometimes seemed very upset when picked up from Mother. A.W. showed signs of stress, including persistent eye rolling, encopresis, and eczema, but Mother denied he was under stress. In October, Mother asked A.W. to get

one of the twins out of the car, and he dislocated the child's elbow. Mother did not seek prompt medical care for her. Both fathers reported Mother's moods were unstable even when she was not drinking. When the Agency discussed safety concerns with Mother, she became defensive and argued the Agency should investigate the fathers instead of her.

In November 2017, the Agency filed new petitions on behalf of all three children. Both petitions alleged a failure to protect due to domestic violence between Mother and R.S. and Mother's alcohol abuse and mental health problems. (§ 300, subds. (b)(1).) A.W.'s petition also alleged infliction of serious emotional damage (§ 300, subd. (c)), and the twins' petition alleged a failure to protect due to the elbow dislocation incident and abuse of a sibling (§ 300, subds. (b)(1), (j)). The children were removed from Mother's care and placed with their fathers, who were declared presumed fathers, and Mother was granted supervised visitation.

According to the January 2018 jurisdiction and disposition report, Mother indicated she would not engage in services and intended to seek joint custody in family court after the dependency case was dismissed. Mother claimed no mental health history, even though during the 2014 dependency case she reported a history of depression, engaged in therapy and anger management training, and took psychotropic medications. Mother claimed to have no substance abuse problems, but she previously reported substance abuse and treatment, and the social worker saw signs of intoxication in December 2017 and January 2018. Mother alleged substance abuse by the fathers, but the Agency never saw any evidence of such abuse. She repeatedly asked police to conduct well-being checks on the children while in their fathers' care, but every report was deemed unfounded. Mother nevertheless vowed to continue making the reports.

In January 2018, the court sustained amended petitions. As to all children, the court sustained allegations about Mother's alcohol abuse, mental health problems, and abuse of siblings. (§ 300, subds. (b)(1), (j).) The court also sustained an allegation of severe emotional abuse in A.W.'s case (§ 300, subd. (c)) and domestic violence in the twin's case (§ 300, subd. (b)(1)). The children were removed from Mother's care and

placed with their respective fathers with family maintenance services. Mother was granted therapeutic visitation with A.W. and visitation with the twins.

C.

In June 2018, R.S. obtained a temporary restraining order against Mother based on her repeated uninvited visits to his apartment; harassing calls, e-mails, texts and social media posts to R.S., his workplace, friends, and family; and disruptive visits to the twins' preschool and therapy center. Mother also posted obscene and profane comments about B.W. on social media.

A month later, the Agency recommended dismissal and termination of dependency jurisdiction, full physical and legal custody with the fathers, and supervised visitation for Mother. The fathers consistently provided loving and safe care for the children, participated in therapeutic services, had stable incomes and housing, and were committed to caring for the children and maintaining their relationship with Mother. R.S. specifically addressed his conflict triggers and codependency issues with respect to Mother, and the Agency believed he could set appropriate limits and boundaries to keep his children safe. All three children were thriving in their fathers' care, and minor's counsel reported A.W. no longer had the eye-rolling tic. The children enjoyed visits with Mother and their siblings. A.W., the only child old enough to address the court, was happy living with B.W. and did not want to visit Mother without his siblings present.

The Agency recommended supervised visitation for Mother. It was concerned about Mother's flight risk, as evidenced in the 2002 dependency case; her inability to focus consistently on the children during visitation or communicate peacefully with their fathers; and her refusal to participate in services. The Agency also recommended the fathers' have sole legal and physical custody of their children because of the parents' inability to make even simple agreements without conflict; Mother's disruptive communications with the children's schools and twins' therapy program; and the need to renew dependency proceedings after Mother regained joint custody in 2016.

At the September 2018 dismissal hearing, Mother's counsel asked to continue the dependency case so Mother's concerns about the fathers' care could be addressed, and

she could participate in services and progress to unsupervised visitation. She asked for joint legal custody or, in the alternative, advance notice of medical and educational decisions and an opportunity to participate, with final decisionmaking committed to the fathers. She also requested unsupervised visitation or supervision arranged by the parents, phone contact with the children, participation in the twins' therapy, and family therapy with A.W., including the right to access his mental health information. Mother testified at the hearing but appeared impaired, presumably by alcohol.

The court dismissed both cases and terminated dependency jurisdiction. It awarded the fathers sole legal and physical custody, granted Mother third-party supervised visitation for three hours once a week, denied Mother phone contact with children, and adopted child abduction prevention orders. The court referred the parents to family court mediation to work out visitation arrangements.

DISCUSSION

The juvenile court *must* terminate jurisdiction over dependent juveniles who remain in a parent's physical custody unless a preponderance of evidence justifies continued jurisdiction. (§ 364, subd. (c); *In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1146–1147, 1163.) We review a decision terminating jurisdiction for substantial evidence and will reverse only if the evidence compels continuation of jurisdiction as a matter of law. (*Aurora P.*, at p. 1163.)

Evidence is overwhelming that the children were safe in their fathers' care, and ongoing dependency jurisdiction was not needed. The children had been in their fathers' care for 10 months and were thriving, as reported by their therapists, educators, and social worker. Although R.S. initially struggled to set firm boundaries with Mother, his therapist and the social worker reported he made substantial progress in this area, as evidenced by his decision to obtain a temporary restraining order against her. The only evidence of continuing risk were Mother's allegations, which had been repeatedly investigated and found baseless by police and social worker.

Mother contends on appeal the court did not retain jurisdiction to order continued therapy and visitation under the terms of a mediation settlement. However, the Agency

confirmed that R.S. could continue therapy on his own insurance, and it was helping B.W. make arrangements to continue therapy for A.W. and himself. The court also specifically ordered supervised visitation for Mother and referred the parents to family court mediation to work out visitation details. The juvenile court's visitation and custody orders would be filed in family court where they could be modified if warranted by a significant change in circumstances and the children's best interests. (§§ 302, subd. (d), 362.4, subds. (a)–(c).)

Mother argues on appeal that by the time of the final dismissal hearing she had chosen to participate in services rather than wait to seek custody in family court. This contention does not help her. First, although her counsel told the court Mother wanted to participate in services prospectively, she did not so testify at the hearing and offered no evidence of that willingness. Second, Mother had been offered supportive services, not family reunification services, because the children were living with a parent. (See, e.g., *In re Jennifer P.* (1985) 174 Cal.App.3d 322, 323–324, 327 [no basis for juvenile court intervention where children are safe in one parent's custody].) Finally, it was far too late for Mother to show her willingness to engage in services 10 months into the case and at the final dismissal hearing.

DISPOSITION

The September 19, 2018 order dismissing the dependency case is affirmed.

BURNS, J.

WE CONCUR:

JONES, P. J.

SIMONS, J.

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